IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs August 21, 2007

STATE OF TENNESSEE v. JASON D. WALKER

Direct Appeal from the Circuit Court for Blount County
Nos. C-15417 & C-13500 D. Kelly Thomas, Jr., Judge

No. E2006-01422-CCA-R3-CD - Filed December 4, 2007

Defendant, Jason D. Walker, appeals the trial court's revocation of his probation in case numbers C-13500 and C-15417, arguing that there was insufficient evidence to find that Defendant had willfully violated the terms of his probation. After a thorough review, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID G. HAYES and ROBERT W. WEDEMEYER, JJ. joined.

J. Liddell Kirk, Knoxville, Tennessee, (on appeal); and Raymond Mack Garner, District Public Defender, (at trial), for the appellant, Jason D. Walker.

Robert E. Cooper, Jr., Attorney General and Reporter; Jennifer L. Bledsoe, Assistant Attorney General; Jerry N. Estes, District Attorney General; and Robert Headrick, Assistant District Attorney General for the appellee, the State of Tennessee.

OPINION

I. Procedural Background

In case number 13500, Defendant entered a plea of guilty to statutory rape on December 17, 2001. He was sentenced to two years, which sentence was suspended, and Defendant placed on supervised probation. Defendant's probation was revoked on May 8, 2002, for failing to (1) obtain full-time employment, (2) avoid incurring new charges, and (3) report his new arrest to his probation officer. Defendant was ordered to serve thirty days in the Blount County Jail, and then placed again on probation. A warrant for violation of probation were filed in September 2002, for failing to attend the sex offender treatment program as instructed, and in December 2002, for failing to pay the requisite fees. Following another revocation hearing, the trial court revoked Defendant's probation on April 8, 2003, and the trial court ordered Defendant to serve the balance of his sentence in

confinement. The trial court's judgment was upheld by this Court on appeal. *State of Tennessee v. Jason D. Walker*, No. E2003-01954-CCA-R3-CD, 2004 WL 1269254 (Tenn. Crim. App., at Knoxville, June 9, 2004).

Defendant was placed on determinate release probation by the Tennessee Board of Probation and Parole on April 26, 2005, with an expiration date of August 16, 2006. After he was released on determinate release probation for his statutory rape conviction, Defendant entered a plea of guilty in case number C-15417 to burglary of a business on June 21, 2005, and was sentenced as a Range I, standard offender, to three years to be served concurrently with his sentence in case number C-13500. Defendant's sentence in case number C-15417 was suspended with Defendant placed on probation. Among other conditions of probation, Defendant agreed to maintain employment, to report any change in employment or his employment status to his probation office, and to pay the requisite fees.

A violation of probation warrant, as amended, was issued on April 10, 2006, in case numbers C-13500 and C-15417, alleging that Defendant had maintained contact with minor children in violation of his sex offender directives, and had failed to pay his requisite fees, maintain employment, report changes in employment to his probation officer, report to his probation officer on May 9, 2006, and make himself available for a home visit in April 2006.

II. Revocation Hearing

Carolyn Brewer with the Tennessee Board of Probation and Parole testified that she supervised Defendant's probation in case numbers C-13500 and C-15417. Ms. Brewer said that the fees and costs associated with case number C-13500 had been paid, but Defendant had made only two payments towards the fees for case number C-15417. Ms. Brewer stated that Defendant had reported that he was employed by "Eldon" but delayed bringing her verification of employment. Defendant then showed Ms. Brewer a direct deposit from Eldon into his girlfriend's account who also worked for the company. Ms. Brewer verified that Defendant had worked at Eldon from January 31 until February 3, 2006, when he was fired after he failed a drug screen.

Ms. Brewer said that Defendant was tested for drugs in April 2005, October 2005, and April 2006, and the results were negative on each occasion. Defendant missed two scheduled appointments with Ms. Brewer on April 11, 2006, and May 9, 2006. Ms. Brewer learned that Defendant was no longer living at his grandmother's residence, and she thus could not schedule a required home visit.

Ms. Brewer said she received information from the Blount County Sheriff's Department that Defendant was having contact with minor children. Ms. Brewer and Deputy Eric Perrin visited the residence of the Morgan family where the children in question visited their father, Billy Morgan, periodically. One of the family members verified that Defendant was staying at the residence with his girlfriend, but he would not let Ms. Brewer and Deputy Perrin into the house. The individual also stated that Defendant was not employed. Ms. Brewer contacted Defendant on March 29, 2006, and

Defendant denied that he had any contact with the Morgan children. The Department of Children's Services conducted an investigation on April 5, 2006, and the Morgan children were prohibited from visiting their father while Defendant resided in the home.

On cross-examination, Ms. Brewer said that she and Defendant had previously discussed the importance of the sex offender directives which required Defendant to have written permission from his therapist and Ms. Brewer before he spent time in the presence of children. Defendant was living at his grandmother's residence at that point, and his nephews and nieces often visited. Defendant assured Ms. Brewer that he left his grandmother's house on those occasions.

Carmen Price, an investigator for the Department of Children's Services, testified that Mr. Morgan's daughter, Lexie, was five years old, and his son, Jared, was eight years old. She interviewed both children at their elementary school. Jared said that he and Defendant were friends, that they played video games together, and that Defendant had pierced Jared's ear. Jared said that Defendant accompanied Mr. Morgan and his children on a trip to Pigeon Forge and confirmed that Defendant was usually present when he went to visit his father. Jared said that Defendant had never inappropriately touched him.

Ms. Price attempted to interview Lexie, but she told Ms. Price that she was not supposed to talk about Defendant. Lexie denied that anyone, including Defendant, had ever inappropriately touched her.

Defendant testified that he was twenty-five years old at the time of the revocation hearing. Defendant said that he was placed on determinate release in April 2005, after spending five months in jail for his statutory rape conviction. Defendant acknowledged that the conditions of his probation required an office visit and a home visit once each month.

Defendant said that he attended sex offender counseling sessions three times each month and paid twenty-five dollars for each session. Defendant acknowledged that he was required to pay the fees and costs associated with his burglary conviction. Defendant confirmed that he had trouble maintaining employment. Defendant said that he worked odd jobs while unemployed in order to pay his child support. Defendant acknowledged that he fell behind in his child support payments when he was incarcerated.

Defendant said that he lived with his now ex-girlfriend, Melissa Hall, after his release from jail on the statutory rape conviction. Defendant said that he moved to his grandmother's residence when he and Ms. Hall broke up. Defendant said that he informed Ms. Brewer of both addresses.

Defendant said that Mr. Morgan was his best friend. Defendant said that Mr. Morgan's children stayed with Mr. Morgan every other week. Defendant did not think that casual contact with children was a violation of his sex offender directives. Defendant acknowledged that he initially told Ms. Brewer that he had not had any contact with the Morgan children. He then told Ms. Brewer that he stayed in the garage while the children visited Mr. Morgan. Defendant said that Jared Morgan

bought the materials to have his ear pierced. Defendant said he did not see "any harm in it," but acknowledged that incident was probably more than a "casual contact." Defendant denied that he was ever alone with the Morgan children or that he had engaged in any type of inappropriate behavior with them. Defendant said that he, Mr. Morgan, and one of the children only rode around when the group went to Pigeon Forge.

Defendant said that he now understood the sex offender directives. Defendant acknowledged that he missed a scheduled appointment with Ms. Brewer in April 2006. Defendant said he was aware that a warrant for violation of probation had been issued, and he was afraid he would be arrested if he attended the meeting.

On cross-examination, Defendant denied that he watched video games with Jared and reiterated that the only time he had spent time with the child was when he pierced Jared's ear.

At the conclusion of the revocation hearing, the trial court found that Defendant had violated the terms of his probation in both case number 13500 and case number 15417. The trial court stated:

> He's violated the probation in the statutory rape charge by having unauthorized contact with minor children, even to the extent of piercing an eight-year-old boy's ear. While the contact, I think, was somewhat exaggerated by the child, I think it was also minimized by the Defendant because it was significant enough to alter the visitation order of the two children.
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> Then, after he found himself in violation status, he simply quit reporting so he wouldn't get arrested and wouldn't have to face this violation. That, of course, is also a violation of his probation in the burglary case.

The trial court revoked Defendant's probation in both cases and ordered him to serve ten months in confinement, with the balance of his sentence for his burglary conviction to be served on probation. Defendant's sentence in case number 13500 would expire at the end of his confinement. The trial court subsequently amended its sentencing order to reduce Defendant's time in confinement by twenty-five percent.

III. Analysis

Defendant contends that he generally complied with his probationary conditions and argues that there was insufficient evidence to support a finding that he willfully violated the conditions of his probation.

A trial court may revoke probation and order the imposition of the original sentence upon a finding by a preponderance of the evidence that the defendant has violated a condition of probation. T.C.A. §§ 40-35-310, -311. The decision to revoke probation rests within the sound discretion of the trial court. *State v. Mitchell*, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). Revocation of

probation is subject to an abuse of discretion standard of review, rather than a *de novo* standard. *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). Discretion is abused only if the record contains no substantial evidence to support the trial court's conclusion that a violation of probation or Community Corrections sentence has occurred. *Id*.; *State v. Gregory*, 946 S.W.2d 829, 832 (Tenn. Crim. App. 1997). Proof of a violation need not be established beyond a reasonable doubt, and the evidence need only show that the trial judge exercised a conscientious and intelligent judgment, rather than acted arbitrarily. *Gregory*, 946 S.W.2d at 832; *State v. Leach*, 914 S.W.2d 104, 106 (Tenn. Crim. App. 1995).

To revoke a sentence of probation, a trial court must find by a preponderance of the evidence that the defendant violated the terms of his probation. Here, Defendant admitted that he violated the terms of his probation in case number 13500 by having contact with minor children as prohibited by the sex offender directives which Defendant had previously executed. Defendant also admitted that he had missed scheduled appointments with his probation officer in April and May 2006. Based on the foregoing, we conclude that the trial court did not abuse its discretion in revoking Defendant's probation in case number 13500 and in case number 15417.

CONCLUSION

After review, we affirm the judgment of the trial court.

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THOMAS T. WOODALL, JUDGE.